



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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SANBORN REGIONAL EDUCATION ASSOCIATION, \*  
NEA-NEW HAMPSHIRE \*

Complainant \*

Case No. T-0256:10

v. \*

Decision No. 85-63

SANBORN REGIONAL SCHOOL BOARD, \*  
INITIALLY AND COLLECTIVELY \*

Respondent \*

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#### APPEARANCES

Representing Sanborn Regional Education  
Association, NEA-New Hampshire  
Marc Benson, UniServ Director

Representing Sanborn Regional School Board  
Robert Leslie, Esq.

#### Also in Attendance

Harry E. Ryerson, Superintendent  
David G. Conant  
Karen Currier  
Dorothy Champion  
Rosemary Putnam, Pres. SREA

#### BACKGROUND

On June 4, 1985 the Sanborn Regional Education Association (SREA) filed improper practice charges against the Sanborn Regional School Board (Board) alleging that (a) on May 1, 1985 the Board voted to reclassify one nurse, Karen Currier, as a "medical assistant" and unilaterally removing her from the bargaining unit in violation of RSA 273-A:5, I, (a); (b) failed to negotiate with exclusive representative in violation of RSA 273-A:5, I, (e); (c) unilaterally changed the composition of the bargaining unit in violation of RSA 273-A:5, I, (g). The SREA also requested a "Cease and Desist Order" be issued by the PELRB and one was issued June 13, 1985, basically ordering a status quo pending a hearing.

The Sanborn Regional School District responded to the unfair labor practice complaint and the motion for "Cease and Desist Order" by admitting that the persons who now hold nurse positions within the school district have been treated as members of the bargaining unit, but denying that nurses as such are part of the bargaining unit, since both the collective bargaining agreement and the PELRB

unit certification provided that the association is the exclusive representative of "all professional employees of the Sanborn Regional School District, the qualifications for whose positions are such as to require him to hold an appropriate prudential issue by the State Board of Education under its regulations governing the certification of professional school personnel...". The nurses are not required to be certified by the State Board of Education.

The school board replied that they agree that the current agreement between the Sanborn Regional Education Association and the school board expires on June 30, 1985 and that the negotiations for a successor agreement began in October of 1984 and concluded in April of 1985. They agreed that during the negotiations neither party made any proposals regarding modification of the bargaining unit or reclassification in the position of nurse and further state that no modification of the unit has in fact taken place. The school board denies that in the reclassification of a particular nurse, Karen Currier, to medical assistant they had unilaterally removed her from the bargaining unit or was in any way a violation of RSA 273-A. The school board agrees that the Sanborn Regional Education Association requested that the school board negotiate the proposed change and that the school board failed to do so but disagreed that this is in any way a violation of 273-A.

The school board continues in its response to state that Miss Currier was not hired as a permanent employee of the school district, rather was hired on April 1, 1985 to work through June 30, 1985 as a replacement for one Joanna Varas who had resigned.

The school board further stated on May 1, 1985 the school board voted to establish a new position of medical assistant the duties for which are different from those of the school nurse position and the qualifications for which are also different in that the position does not require a person filling it to have a baccalaureate degree. The school board argues that the establishment of a new position is a management prerogative under both RSA 273-A and the management rights provision of the collective bargaining agreement Article 4. In addition, the school board argues that the fact that the Public Employee Labor Relations Board certifies certain positions as being within a bargaining unit and the fact that the collective bargaining agreement recognizes certain positions all within a bargaining unit does not require a public employer to fill such positions.

On July 5, 1985 the Sanborn Regional Education Association, NEA-New Hampshire filed a petition to amend its original complaint in the following manner. The education association alleges that on or about May 3, 1985 Superintendent Ryerson told the association president Rosemary Putnam that if the SREA continued to complain about the school boards creation of a "medical assistant" position there might not be any nurse in the building next year. Further, that prior to the filing of the unfair labor practice complaint on June 4th nurse Karen Currier was given verbal and written assurances of employment for the 1985-86 school year by Superintendent Harry Ryerson, and subsequent to the filing of the unfair labor practice complaint on June 4, 1985 offers of employment to nurse Karen Currier were withdrawn by the school district.

On July 13, 1985 the PELRB issued a "Cease and Desist Order" Decision No. 85-4 requiring that the district maintain Miss Currier in her current nurse position until the PELRB holds a hearing and renders a decision on the merits of the unfair labor practice complaint. Subsequent to the Public Employee Labor Relations Board issuance of a "Cease and Desist Order" Superintendent Ryerson stated to the news media and to the SREA President Rosemary Putnam that the district has no

intention of continuing Miss Currier in her nurse position beyond the end of the school year June 17, 1985. The association argued that the actions cited above constituted retaliation by the district against Miss Currier for filing a complaint under RSA 273-A specifically violating RSA 273-A:5, I, (d). The action cited above makes it clear the district intends to ignore the PELRB "Cease and Desist Order" issued June 13, 1985 which in itself is a violation of RSA 273-A:5, I, (g).

The Sanborn Regional School Board in answer to the amended unfair labor practice complaint denies any violation of RSA 273-A but agrees that offers of employment to nurse Karen Currier were withdrawn subsequent to the filing of the unfair labor practice complaint on June 4, 1985. A hearing was held at the PELRB office in Concord, New Hampshire on July 25, 1985 with all parties represented.

#### FINDINGS OF FACT

At the hearing testimony and exhibits contributed to the establishment of the following facts:

1. While the unit certification issued by the PELRB does not mention nurses, the school board agreed that in practice the nurses were considered to be part of the bargaining unit and covered by the contract negotiated between the parties.
2. At one point the attorney for the school board did suggest that if a medical assistant position was created that it would belong in the support staff unit rather than the teacher unit.
3. Testimony was received which indicated clearly that the school nurses had a teaching component to their position which, while it did not rise to the level of regular teaching, nevertheless at the very least had them serve as a resource person to the teachers of the school in terms of certain special programs that were covered during the course of the school year and that this at times brought the nurse directly into the classroom as an instructor in some type of particular program having to do with health of and certain biological developments of the students but at no time were the nurses regularly teaching nor giving examinations nor grading the students, etc. as were the regular teachers.
4. The testimony reveals that the newly created medical assistant job contained some 22 duties which in fact were performed by nurses as well.
5. Testimony also elicited the fact that the nurses were assigned certain tasks as part of the "pupil evaluation team" and also to educate other members of the staff, which tasks as part of their job description were not included as part of the medical assistant job description. With the exception of this teaching role, such as it is for nurses, the medical assistant position and the nurse position is essentially similar. Testimony and exhibits indicated that nurse Currier had been offered a position which was to expire June 30, 1985 according to the contract which was agreed to with a salary taken from the teacher salary scale. Miss Currier was also given the impression that she would be reappointed if there was a job available. Nurse Currier met with

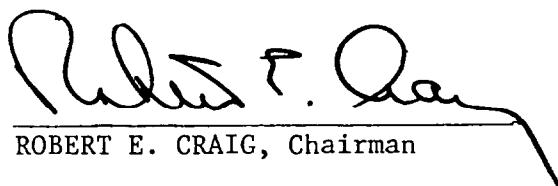
Superintendent Ryerson sometime early in May and discussed the possibility of her taking the position of medical assistant which was paid at an hourly rate and amounted to about \$2300 less in salary than the position of nurse. Superintendent Ryerson testified that the medical assistant position was designed not to be required to teach or to participate in pupil evaluation teams. He also testified that it was his belief that three nurses could handle all the other tasks and that the medical assistant would help out only with the actual medical needs of the school children. Superintendent Ryerson also testified that it was the policy of the school board to review all positions as they became open to see whether or not those positions needed to be continued and that this was the case with the position of nurse that became open with the resignation of the previous school nurse in March of 1985. Superintendent Ryerson reiterated his recommendation to the school board that three nurses could conduct the necessary teaching and evaluation program of the schools with the addition of one medical assistant.

#### RULINGS OF LAW

1. It is the opinion of the PELRB that the creation of a new position, entitled "medical assistant", is sufficiently distinct from the position of nurse so as to be seen as the exercise of managerial rights under RSA 273-A to create new positions
2. The creation of this new position does not appear to be an attempt on the part of management to subvert thier bargaining relationship with the Sanborn Regional Education Association, NEA-New Hampshire.
3. The opinions of Superintendent Ryerson and the Sanborn Regional Education Association as to the placement of the new position either in the teachers unit or in the support staff unit are not considered to be evidence of anti-union bias on their part. The placement of this new position into a bargaining unit will be handled on petition to the PELRB by interested parties.
4. While it is clear the the school board can create a new position which is not the same as a nurse and which is therefore not necessarily in the same bargaining unit is also clear that the creation of new positions as in the cases where positions are eliminated will have a certain impact on the working conditions of other employees and that the impact of this decision must indeed be negotiated with the representatives of the bargaining unit.

#### DECISION AND ORDER

It is the decision of the PELRB in this case that no unfair labor practice has been committed by the Sanborn Regional School Board or its agents and that the PELRB orders that the Sanborn Regional School Board be prepared to negotiate the impact of its decisions with the exclusive representative of the bargaining unit in the Sanborn Regional Educational Association.

  
ROBERT E. CRAIG, Chairman

Signed this 22nd day of August, 1985.

By unanimous vote. Chairman Robert E. Craig presiding. Members Russell Hilliard, Seymour Osman and James Anderson present and voting.



STATE OF NEW HAMPSHIRE  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

MEMBERS

ROBERT E. CRAIG, CHRM.  
RICHARD W. ROULX  
JAMES C. ANDERSON  
SEYMOUR OSMAN  
RUSSELL F. HILLIARD, ESQ.

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September 9, 1985

To: Parties of Interest and  
PELRB Mailing List

Please be advised that Richard W. Roulx was incorrectly listed as a member present and voting in the case of James C. Falconer v. Seabrook Employees Association, Case No. M-0575:1, Decision No. 85-64.

Chairman Robert E. Craig did preside. Members Seymour Osman and James C. Anderson were present and voting.